



INTERIOR BOARD OF INDIAN APPEALS

Charles N. Henry v. Pacific Regional Director, Bureau of Indian Affairs

43 IBIA 59 (05/17/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CHARLES N. HENRY,	:	Order Dismissing Appeal
Appellant,	:	Without Prejudice
	:	
v.	:	
	:	Docket No. IBIA 06-57-A
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	May 17, 2006

Charles N. Henry, Esq. (Appellant), counsel appointed by the Siskiyou County Superior Court, California, in an Indian child custody proceeding, 1/, appealed from a February 10, 2006 decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA) denying certification of Appellant's client as eligible to have his appointed counsel compensated by BIA, pursuant to 25 C.F.R. § 23.13.(b). The Regional Director's decision was issued in response to a Superior Court order dated January 4, 2006, appointing Appellant as counsel for the period from September 5, 2005 through December 21, 2005.

The Regional Director's decision correctly advised Appellant that BIA's denial of eligibility for payment is appealable to the Assistant Secretary - Indian Affairs. See 25 C.F.R. § 23.13(c). Because Appellant's notice of appeal was also sent to the Assistant Secretary the Board understands that Appellant is pursuing an appeal to the Assistant Secretary with respect to the eligibility issue.

The Regional Director's decision also stated, however, that "[t]o the extent that [the court] order seeks approval of * * * payment of fees by the Bureau of Indian Affairs, the request is denied." Decision at 1. The Decision advised Appellant that "[w]ith respect to denial of payment [of attorney fees and expenses] under [25 C.F.R.] § 23.13(e)(2), my determination may be appealed to the [Board]" pursuant to 25 C.F.R. § 23.13(f).

Appellant appealed that portion of the Regional Director's decision to the Board.

1/ In re Guardianship of: C[] W[], A Minor, No. SCCV PG 95-13628 (Siskiyou County Superior Court).

On receipt of the appeal, the Board suggested that this appeal may not be ripe for review, pending a decision by the Assistant Secretary on the Regional Director's denial of eligibility. The Board requested position statements from the parties. See Mar. 15, 2006 Order. In response, Appellant agrees that this appeal is not ripe for review, but suggests that the Board stay the proceeding rather than dismiss it without prejudice. The Regional Director suggests that dismissal without prejudice is appropriate.

The Indian Child Welfare Act regulations governing payment for appointed counsel in involuntary Indian child custody proceedings, 25 C.F.R. § 23.13, provide a two-step process for payment of attorney fees and expenses. First, the Regional Director must certify a client as eligible to have his or her appointed counsel compensated by BIA. Id. § 23.13(b). If certification of eligibility is denied, that decision is appealable to the Assistant Secretary - Indian Affairs. Id. § 23.13(c). Second, for actual payment of attorney fees and expenses, the court must determine the amount of payment and submit approved vouchers to the Regional Director for authorization of payment. Id. § 23.13(d), (e). If the Regional Director denies payment, that decision is appealable to the Board. Id. § 23.13(f).

The Board concludes that dismissal of this appeal without prejudice is appropriate. The Regional Director's decision states that "to the extent" the court order seeks approval of payment of attorney fees, "the request is denied." But the court order on which the Regional Director acted was titled "Order and Certification Re Appointment of Counsel Under the Indian Child Welfare Act, § 1912(b)," and did not seek approval of payment. The order was limited to appointing Appellant as counsel and making findings regarding the eligibility criteria in 25 C.F.R. § 23.13(b). The court order did not determine any payment amount nor did it purport to transmit approved vouchers for payment. Moreover, a careful reading of the Regional Director's decision indicates that although the Regional Director mentioned the regulatory provision governing denial of payment, and included appeal instructions regarding denial of payment, the decision itself is limited to discussing and denying certification of eligibility, except for the Decision's overbroad denial language.

Under these facts, the Board finds that the only issue properly before the Regional Director was the certification-of-eligibility issue, and that the Regional Director's February 10, 2006 decision should be construed as deciding only that issue, which is now on appeal to the Assistant Secretary. Thus, Appellant's appeal to the Board is premature. Cf. Conley v. Pacific Regional Director, 36 IBIA 289 (2001) (dismissing appeal as premature when payment has not been requested). If and when approved vouchers are submitted to the Regional Director, he will be required to issue a decision on that issue and Appellant will be entitled to appeal if payment is denied.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it without prejudice as premature.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge